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ART UNIT PAPER NUMBER

3634

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/620,731
Filing Date: July 16, 2003
Appellant(s): MAYS, WESLEY M.

Michael E. Martin
For Appellant

EXAMINER'S ANSWER

MAILED

MAY 16 2005

GROUP 3600

This is in response to the appeal brief filed 2/27/06 appealing from the Office action
mailed 4/6/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct. It should be noted that claims 46 and 47, indicated as being allowed in the final office action, are also included in the summary of the claimed invention. Appellant has indicated that claims 46 and 47 are allowed, and consequently not subject to appeal, in the "Status of the Claims" section, above, and in the "Grounds of Rejection to be Reviewed on Appeal" section, immediately below. Please disregard the summary of these two claims as they are not part of the group of claims being appealed.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 44 and 48-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen in view of Isobe et al.

Please refer to the final rejection.

(10) Response to Argument

The Examiner would like to address claims 48, 50 and 54, which are similar in scope, first as they are believed to be the broadest claims under appeal.

As discussed in the final office action, Cohen provides the structure and features of the recited invention as follows: In Cohen, see base control circuit 110, base transmitter 212, base receiver 210, base circuit manual switches S1, S2, remote unit 170 having a remote receiver 310 and a remote transmitter 312, a signal processor 200, and remote manual switch 318. The claims recite a system whereby when the vehicle, having the remote control device therein, drives out of range from the garage, having the base control therein, the garage door automatically closes. This is clearly met by Cohen. In his brief specification, Cohen clearly states that his device works in this manner. See column 2, lines 43-54, and column 4, lines 8-59, which describes the flow

chart of Fig. 4. Note specifically column 2, lines 46-51. To summarize the applicable portion of the flow chart, a timer to close the door after it has been opened begins at 400 and if the magnitude of the signal from the remote control's transmitter (in the vehicle) is greater than a threshold value (boxes 405, 406), then the timer is restarted, box 407, and the door remains open. When the magnitude of the signal from the remote control's transmitter is weak enough (i.e. below a threshold value, i.e. far enough away), then the door is closed, eventually, at box 428. Therefore, the steps in claim 48, as well as claims 50 and 54 are met as follows: the base transmitter is transmitting a radio signal to the remote receiver; causing the base switch to open the door is met by activating switch S1 or S2; and keeping the door open as long as a signal is received by the transmitter in the remote control unit is met as discussed above.

Consequently, Cohen anticipates this portion of the claims. What is not shown is the presence of two remote control units. However, while it is well known that virtually all two-car garages with automatic door openers have a remote for each car, and such a recitation could have been met by a mere mention of obviousness to that effect, such is well known as illustrated by Isobe et al at 11,11a. It would have been obvious to provide Cohen with two remote units so as to be usable with two vehicles. Appellant's arguments merely state that Isobe et al does not disclose a system for garage doors, which is accurate. Isobe et al is simply relied upon to show the notoriously well known use of plural remote controls, if such an additional teaching is needed.

Claims 44,52,53 and 56 (very similar in scope) will now be addressed. In addition to the structure and features discussed above (e.g. automatically closing the door when

the vehicle goes out of range), claim 44 adds the limitation that the system will open the door when the vehicle comes back into range. While Cohen specifically states that his device is used to close a door after the remote control has left receiving and transmitting range, as discussed above, it would have been well within the purview of one of ordinary skill in the art that communication between the base unit and the remote units could also serve to open the door upon reentry of the remote unit into base unit range. The concept and technology presented by Cohen are the same as presently disclosed and claimed. It is established that using the same structure and system and changing the programming to achieve a different outcome constitutes what is termed a "new machine". However, this change in programming must be nonobvious to read over the prior art. While claim 44 does include a limitation (automatically opening the door) that is not disclosed by Cohen, modifying Cohen to be programmed to open the door when the remote control comes back into range of the base controller would have been well within the purview of one of ordinary skill in the art given that Cohen (1) is clearly concerned with such a type of automatic operation and (2) provides the structure and system that could be easily modified to do so. Consequently, movement into and out of range effects opening and closing, depending on the last stored position, of the door.

Modifying Cohen to satisfy the requirements of claims 46 and 47 (checking for the presence of more than one remote control and ceasing signal transmittance once all remotes are within range), and claim 55 (keeping the door open if the base receiver fails to find a remote control unit), are similarly viewed as being obvious modifications of Cohen.

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To summarize, Cohen has the structure and system that actually anticipates certain claims, namely 48,50 and 54, except for the presence of two remote control units instead of one, which is taught by Isobe et al. Regarding the remaining claims, one of ordinary skill in the art in possession of Cohen and wanting to provide for automatic opening of the door, searching for the remote control, etc., would clearly have recognized that Cohen could be modified (reprogrammed) to achieve these goals.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

BMJ


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Primary Examiner

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SUPERVISORY PATENT EXAMINER